

MINUTES
ENFORCEMENT COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 SOUTH IH-35, BOARD ROOM, AUSTIN, TX
August 16, 2012– 9:15 AM

CALL TO ORDER. Committee Chair, Gary Raba, D.Eng., P.E., called the General Issues Committee meeting to order at 9:16 am on August 16, 2012, at the Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, TX 78741 (All votes are unanimous, unless otherwise noted).

1. Roll call and welcome visitors.

Gary Raba, D.Eng., P.E.	Chair
James “Jim” Greer, P.E.	Member
Elvira Reyna	Member
Edward Summers, Ph.D.	Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General was present to provide legal counsel to the Board. Mr. Edmundo Gonzalez, Jr., P.E., and Mr. Jose I. Guerra, P.E., Emeritus Board Members were present.

The following staff members were present:

Lance Kinney, P.E.	Executive Director
Priscilla Piphon, MPA	Deputy Executive Director
David Howell, P.E.	Director of Licensing
C.W. Clark, P.E.	Director of Compliance & Enforcement
Dewey Helmcamp, III, JD	Staff Attorney
Clif Bond	Supervising Investigator
Charles Pennington, P.E.	Staff Engineer
Dorothy Gonzales	Executive Assistant

Visitors. Faye Rencher, Sunset Commission; Joe Walraven, Sunset Commission; Steve Olge, Sunset Commission; Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Peyton McKnight, American Council of Engineering Companies – Texas; Jennifer McEwin (TSPE), Terry Sams, Texas Department of Transportation (TxDOT); Sam Kannappan, P.E., Board Member; Bobby Ballí, P.E., Board Member; Ed Summers, Ph.D., Board Member.

2. Public comment. None.

3. Discuss and possibly approve the May 24, 2012 Enforcement Minutes.

It was MOVED/SECONDED (Greer/Summers) to approve the May 24, 2012, Enforcement Minutes as submitted. A vote was taken and the MOTION PASSED.

4. Discuss and possibly act on the following rule adoption(s):

Mr. Clark reported that the following rules are up for adoption. Only one comment was received, and it was in favor of the rule, §137.17. Comments were not received on the other rules.

- **Chapter 137: Compliance and Professionalism.**
 - **§137.17 Continuing Education Program.**
- **Chapter 139: Enforcement.**
 - **§139.13 Filing a Complaint.**
 - **§139.35 Sanctions and Penalties.**

It was MOVED/SECONDED (Greer/Summers) to recommend to the Board at its Regular Quarterly meeting on August 16, 2012, to adopt the referenced rules listed above as submitted. A vote was taken and the MOTION PASSED.

5. **Discuss and possibly act on the following rule proposals.**

Mr. Clark commented that at the last scheduled Enforcement Committee meeting the following rules were proposed to the Committee for guidance. Staff was directed to draft changes as need and bring back to the Committee as proposals.

- **§137.7 License Expiration and Renewal.** This proposal addresses license expiration and renewal specific to license holders; added as (g) “A license holder who at the time of his/her annual renewal has any unpaid administrative penalty owed to the Board or has failed to comply with any term or condition of a consent order, agreed board order, or final board order shall not be allowed to renew his/her license to practice engineering until such time as the administrative penalty is paid in full or the term or condition is satisfied unless otherwise authorized by the consent order, agreed board order, or final board order.”
- **§137.31 Seal Specifications.** This proposal specifies that the seal, whether electronic or physical, should not be larger than 2 inches and that standard letter case (upper and lower as well as all upper) depicting the name on the seal shall be acceptable.
- **§137.37 Sealing Misconduct.** This proposal adds language that allows the Board to enforce against someone who uses someone else’s seal.

Dr. Raba asked how the Board would change this to be a civil offense. Ms. Mohan responded that it would have to be by statute. Dr. Raba asked staff to discuss statute changes. Mr. Greer asked that staff research current legal aspects that staff may consider. There was discussion by Committee members regarding the seal requirements. Mr. Clark added that city and building officials look for the seal on the documents.

- **§137.65 Action in Another Jurisdiction.** This proposal adds new language that is closely tied with §1001.068, a new section of statute from the 82nd Legislative Session. The rule change is intended to support the statute, and allows the Board to enforce against a Texas engineer practicing under this new section of the statute in another state.

The Committee members and staff discussed the primary notification of these engineers to the Texas Board, the use of NCEES’s enforcement database, and additional information on §1001.068.

It was MOVED/SECONDED (Summers/Greer) to recommend to the Board at its Regular Quarterly meeting on August 16, 2012, to approve the rules listed above as submitted, and post in the Texas register. A vote was taken and the MOTION PASSED.

6. **Director Of Compliance & Enforcement Report.**

- **C & E Process Improvements Update.** Mr. Clark gave an update on the new and improved processes for cases such as the new legal letter templates which have contributed to quicker hand off of cases. Mr. Helmcamp taking over the legal aspects of the cases has helped tremendously. Mr. Clark commented that a new investigator has been hired to fill the open position.

7. **Discuss, consider, and possibly act on decision resulting from SOAH case and Final Order for the following cases:**

- D-31480; Raghunath Dass, P.E.
- B-33004; Bryan Hull

Mr. Helmcamp reported that Mr. Dass’ case was heard at SOAH, and that all of the procedural requirements have been met. The Board received a Proposal for Decision (PFD) which supported the fact that the Board sustained its burden of proof that the allegations were proven, and that the Board was authorized to impose a sanction against Mr. Dass’ license. Mr. Dass took exception to the final order. Mr. Helmcamp replied to the exception. The judge considered all of the materials and adhered to the original PFD. Mr. Helmcamp reviewed the final order (submitted as an exhibit) with the Committee.

Mr. Helmcamp reported that Mr. Hull's was an unauthorized practice case which involved the use of the seal of a deceased engineer. Mr. Hull's case was taken to SOAH, and he did not show up at the hearing. The judge entered a default judgment which grants the Board the authority to issue a final board order based on the failure to appear and contest the charges. Mr. Helmcamp reviewed the final order (submitted as an exhibit) with the Committee. If Mr. Hull refuses to comply with the final order, his case will be sent to the Attorney General Office for collection.

Mr. Helmcamp shared with the Committee that TBPE has one case still pending at SOAH. He added that there has been communication regarding settlement negotiations. He is in the process of responding to the last settlement offer. If the offer is accepted, the agreed board order will be presented in November; if not accepted, we will prepare for SOAH. Informal conferences are scheduled in October.

It was MOVED/SECONDED (Reyna/Summers) to recommend to the Board to approve the final board order for Mr. Dass and Mr. Hull as submitted. A vote was taken and the MOTION PASSED 3 to 1; Mr. Greer recused himself from voting on Mr. Dass' motion.

Dr. Raba addressed the Sunset team and commented that Board members in private practice are used to cases being handled in a much quicker manner than at the state. One of the pluses that the Agency has done, in his opinion, is taking the step and hiring counsel, the addition of more investigators, and trying to streamline the process so that the response time is quicker. The engineering community as a whole is slightly disappointed on the time it takes to complete a case, but this agency has taken measures to try to improve this.

8. Staff Attorney Reports.

- SOAH Cases
- Suits Against the Board
- Status of Court Cases (Injunctions)

Mr. Helmcamp directed Committee members to the exhibit that is included for their review. He thanked Ms. Mohan for her prompt attention and assistance with the David Day case. Ms. Mohan added that a notice of hearing will be sent out September 27. Mr. Helmcamp added that a report will be provided at the November meeting. He reported that Ms. Mohan did a great job by filing a petition seeking an injunction, secured service on an out of state individual who is from Arizona who did not answer. Later this week or early next week Ms. Mohan will be going to a hearing to secure a default judgment.

9. Issues for consideration and schedule next meeting.

ADJOURN.

It was MOVED/SECONDED (Greer/Summers) to adjourn the meeting at 9:56 am. A vote was taken, and the MOTION PASSED.

Date approved by Committee as submitted:

November 29, 2012

Date accepted by Board:

November 29, 2012